

RESOLUTION AGREEMENT

Between the Arcadia Unified School District,
the U.S. Department of Education, Office for Civil Rights, and
the U.S. Department of Justice, Civil Rights Division

OCR Case Number 09-12-1020

DOJ Case Number 169-12C-70

BACKGROUND AND JURISDICTION

The U.S. Department of Education, Office for Civil Rights (“OCR”) and the U.S. Department of Justice, Civil Rights Division (“DOJ”) (jointly referred to as the “United States”) investigated a complaint (“Complaint”) filed against the Arcadia Unified School District (“District”), pursuant to Title IX of the Education Amendments of 1972 (“Title IX”) and Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c *et seq.* (“Title IV”). The Complaint alleged discrimination on the basis of sex against a student in the District (“Student”). The Student is a transgender boy who has consistently and uniformly presented as a boy at school and in all other aspects of his life for several years, as supported by documentation provided to the District by his family. The Student has been known, treated, and accepted as a male by his family, teachers, and classmates. Specifically, the Complaint alleged that the District denied the Student educational opportunities on the basis of sex when, because the Student is transgender, it prohibited him from accessing (1) sex-specific facilities designated for male students at school for use during school and extracurricular activities, and (2) sex-specific student cabins for male students during a school-sponsored overnight academic camp. Without admitting any unlawful conduct, in order to resolve the Complaint, the District agrees to implement this Resolution Agreement (“Agreement”), which includes individual and District-wide measures.

DEFINITIONS

For the specific purposes of this Agreement, the following definitions apply:

- A. “Gender-based discrimination” is a form of sex discrimination, and refers to differential treatment or harassment of a student based on the student’s sex, including gender identity, gender expression, and nonconformity with gender stereotypes, that results in the denial or limitation of education services, benefits, or opportunities. Conduct may constitute gender-based discrimination regardless of the actual or perceived sex, gender identity, or sexual orientation of the persons experiencing or engaging in the conduct.
- B. “Sex assigned at birth” and “assigned sex” refer to the gender designation listed on one’s original birth certificate.
- C. “Gender expression” refers to external cues that one uses to represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.

- D. “Gender identity” refers to one’s internal sense of gender, which may be different from one’s assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student’s core identity.
- E. “Transgender” describes an individual whose gender identity is different from the individual’s assigned sex. “Transgender boy” and “transgender male” refer to an individual assigned the female sex at birth who has a male gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one’s recognition as transgender. For purposes of this Agreement, a “transgender student” is a student who consistently and uniformly asserts a gender identity different from the student’s assigned sex, or for which there is documented legal or medical evidence that the gender identity is sincerely held as part of the student’s core identity.
- F. “Gender transition” refers to the experience by which a transgender person goes from living and identifying as one’s assigned sex to living and identifying as the sex consistent with one’s gender identity. A gender transition often includes a “social transition,” during which an individual begins to live and identify as the sex consistent with the individual’s gender identity, with or without certain medical treatments or procedures.
- G. “Gender stereotypes” refers to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.
- H. “Gender nonconformity” refers to one’s gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes.
- I. “Sex-specific facilities” refers to facilities and accommodations used by students at school or during school-sponsored activities and trips, and include, but are not limited to, restrooms, locker rooms, and overnight facilities.
- J. “Parent” means a student’s parent(s) or legal guardian(s).

TERMS OF THE AGREEMENT

I. EXPERT CONSULTANT

- A. No later than ninety (90) calendar days after execution of this Agreement, the District will engage one or more third-party consultants with expertise in child and adolescent gender identity, including discrimination against transgender and gender nonconforming youth, to support and assist the District in implementing this Agreement.

- B. The consultant(s) will be agreed upon by both the District and the United States.
- C. The District will promptly notify the United States if it intends to retain additional or alternative consultants during the term of this Agreement for purposes of implementing this Agreement.
- D. The District will be responsible for all costs, if any, associated with the retention of expert consultants.

II. INDIVIDUAL MEASURES

- A. For the duration of the Student's enrollment in the District, the District will continue to:
 - 1. provide the Student access to sex-specific facilities designated for male students at school consistent with his gender identity; however, the Student may request access to private facilities based on privacy, safety, or other concerns;
 - 2. provide the Student access to sex-specific facilities designated for male students at all District-sponsored activities, including overnight events and extracurricular activities on and off campus, consistent with his gender identity; however, the Student may request access to private facilities based on privacy, safety, or other concerns;
 - 3. treat the Student the same as other male students in all respects in the education programs and activities offered by the District; and
 - 4. ensure that any school records containing the Student's birth name or reflecting the Student's assigned sex, if any, are treated as confidential, personally identifiable information; are maintained separately from the Student's records; and are not disclosed to any District employees, students, or others without the express written consent of the Student's parents or, after the Student turns 18 or is emancipated, the Student.
- B. The District will notify the Student and his parents that they may, at any point during the Student's enrollment in the District, request that the District establish a support team to ensure the Student has access and opportunity to participate in all programs and activities, and is otherwise protected from gender-based discrimination at school. If the District receives such a request, it will form a support team that will:
 - 1. include, at a minimum, the Student, his parents, an advocate or representative of the parents' choice (if any), a medical professional of the

parents' choice (if any), and relevant District personnel familiar with the Student;¹

2. develop a Student-specific support plan to provide the Student with safe and equitable access to all school and District facilities and activities, addressing any particular issues raised by the Student or his parents;
3. document its meetings, recommendations, and decisions, including, but not limited to, the date and location of each meeting, the names and positions of all participants, the basis for its recommendations and decisions, and supporting third-party opinions and information considered and/or relied upon in the meeting; and
4. at least once each school year and at any time upon the request of the Student or his parents, review the Student's particularized circumstances to determine whether existing arrangements related to the Student's gender identity, gender transition, or transgender status are meeting his educational needs and ensuring that the Student has equal access to and equal opportunity to participate in the District's education programs and activities. Once constituted, the support team will be in place for the remainder of the Student's enrollment in the District or until his parents request in writing that it be terminated.

III. DISTRICT-WIDE MEASURES

A. Policies, Procedures, and Regulations

1. No later than November 30, 2013, the District, in consultation with its consultant(s) and following approval by the United States, will revise all of its policies, procedures, regulations, and related documents and materials (e.g., complaint forms, handbooks, notices to students and parents, website information) related to discrimination (including harassment) to:
 - a. specifically include gender-based discrimination as a form of discrimination based on sex, and
 - b. state that gender-based discrimination includes discrimination based on a student's gender identity, gender expression, gender transition, transgender status, or gender nonconformity.
2. No later than January 31, 2014, the District, with the assistance of the consultant(s) and following approval by the United States, will ensure that its policies, procedures, and regulations applicable to or governing student

¹ The District will not bear the costs of the student's medical professional or advocate, if any.

participation in all programs and activities offered by the District provide all students, including transgender students and other students who do not conform to sex stereotypes, equal access to and equal opportunity to participate in all such programs and activities in a manner that does not discriminate based on sex. The District will:

- a. identify all existing policies and regulations applicable to or governing students' access to and participation in programs and activities offered by the District, and revise those policies and regulations as necessary to ensure that all students, including gender nonconforming and transgender students, are provided with equal access to all such programs and activities;
 - b. modify current policies or develop a comprehensive gender-based non-discrimination policy to ensure that all students, including transgender students, are protected from gender-based discrimination and have equal access to and equal opportunity to participate in all education programs and activities offered by the District; and
 - c. develop an implementation guide for site administrators, faculty, and staff addressing the application of the District's gender-based discrimination policies, as adopted or modified under ¶ III.A.2.b. above, to transgender and gender nonconforming students.
3. If the District is notified by a student, parent, or representative that the student is undertaking, planning to undergo, or has completed a gender transition, the District will promptly inform the notifying individual and the student of their right to request a support team of appropriate individuals to ensure that the student has equal access to and equal opportunity to participate in the District's programs and activities.

B. Instruction and Professional Development

1. Starting with the 2013-2014 school year, and then annually thereafter for the term of this Agreement, the District, in consultation with its consultant(s) and the United States, will provide training to all certificated District-level and school-based administrators regarding the District's obligations to prevent and address gender-based discrimination; implementation of the policies, procedures, and regulations adopted under this Agreement; and best practices for creating a nondiscriminatory school environment for transgender students. The initial training will be conducted no later than March 31, 2014. Site administrators will, throughout each school year, provide this information to all faculty and staff during existing trainings, meetings, and other appropriate opportunities. No later than March 31, 2014, and by November 1 of each school year thereafter, the District will submit a plan, for the United

States' review and approval, indicating how it intends to provide this information to faculty and staff.

2. Consistent with the policies and procedures adopted in this Agreement and with applicable law, the District, in consultation with its consultant(s), will, in its bullying prevention and sexual harassment programs, provide age-appropriate instruction to all students on gender-based discrimination and will provide examples of prohibited conduct, including harassment, in various school-related contexts, including the types of conduct prohibited with respect to sex-specific facilities and elsewhere at school.

IV. MONITORING AND REPORTING

- A. For all policies, procedures, regulations, and other materials revised under this Agreement, the District will provide draft documents to the United States for its review no later than thirty (30) calendar days before the applicable deadline for implementation. The United States will provide comments no later than thirty (30) calendar days after its receipt of the draft documents. The parties will work in good faith to resolve any disagreements by the applicable deadline for implementation.
- B. The District will provide documentation of its compliance with this Agreement through written compliance reports, which will be produced to the United States on February 15 and August 15 of the first year this Agreement is in force, and annually thereafter on August 15 for each year this Agreement is in place. The first report will be due on February 15, 2014 and will contain information for the period running from the date of the execution of this Agreement through January 31, 2014. Each subsequent report will contain information for the period ending July 31 of the respective year. Each report will contain the following information and documents:
 1. the name(s), position(s), employer(s) or professional affiliation(s), and contact information of each consultant retained by the District in connection with this Agreement, as well as the start and end dates of each individual's services;
 2. a copy of all relevant policies, procedures, regulations, and related materials (e.g., handbooks) that were implemented, revised, or rescinded during the reporting period;
 3. a copy or detailed description of all gender-based discrimination or harassment complaints or incidents that occurred during the reporting period, including documentation or a detailed written description of the District's response to each incident;
 4. whether the District was notified during the reporting period that any student was undertaking, planning to undergo, or had completed a gender

transition; and, if so, whether the District notified each such student and his/her parent of their right to request a support team; and whether any requests for a support team were made;

5. for all support teams formed or that were in place during the reporting period (including for the Student), the names and positions of the team members, documentation of the request for the formation of the team, date(s) the team met, and any documentation of its meetings, recommendations, and decisions;
 6. a detailed description or documentation related to all trainings provided to District employees pursuant to this Agreement, including the date(s) of each training; and the name, position, and school/work site of each employee who was required, but did not attend the training;
 7. a detailed written description of any changes to the District's bullying prevention and sexual harassment programs made pursuant to this Agreement, including a copy of all relevant instructional materials; and
 8. a detailed written description of the District's compliance with the individual measures required by Section II of this Agreement, as well as all documentation related to the Student's support team and support plan.
- C. The District will provide all reports, documents, and information required to be produced to the United States pursuant to this Agreement in electronic form, usable by the United States, or in written form if the data in electronic form would not be usable, in accordance with the timelines set herein.
- D. The District will produce to the United States all reports, documents, and information required by this Agreement, including those containing students' personally identifiable information ("PII") from education records. Pursuant to the law enforcement exception to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g(b)(1)(C) and (3), which applies to the United States in this matter, the United States may receive documents containing PII from education records in connection with the enforcement of the federal legal requirements which relate to federally supported education programs. *See* 20 U.S.C § 1232g(b)(1)(C)(ii). The United States will maintain the confidentiality of all such information produced by the District, consistent with the Privacy Act of 1974, 5 U.S.C. § 552a, the Freedom of Information Act, 5 U.S.C. § 552, and FERPA.

V. ENFORCEMENT

- A. The United States may enforce the terms of this Agreement, Title IX, Title IV, and all other applicable federal laws.
- B. OCR will not initiate enforcement action and DOJ will not initiate litigation regarding the Complaint provided that the District implements the provisions of this Agreement in good faith.²
- C. If OCR or DOJ determines that the District has failed to comply with the terms of this Agreement or has failed to comply in a timely manner, one or both agencies will so notify the District in writing and will attempt to resolve the issue(s) in good faith with the District. If the United States is unable to reach a satisfactory resolution of the issue(s) within sixty (60) calendar days of providing notice to the District, OCR may initiate administrative compliance proceedings³ and DOJ may initiate civil enforcement proceedings in federal court.
- D. The District understands that the United States will monitor this Agreement until it determines that the District has fulfilled the terms of this Agreement. Sections I and III of this Agreement may not be terminated prior to June 30, 2016. Section II of this Agreement may not be terminated prior to the Student's withdrawal or graduation from the District, whichever is sooner.
- E. The District further understands that the United States retains the right to evaluate the District's compliance with this Agreement, including the right to conduct site visits, observe trainings, interview District staff and students (including *ex parte* communications with students and employees other than school and District administrators), and, if necessary, request additional reports or data.

² As of the date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described herein. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Agreement.

³ OCR may initiate compliance proceedings under 34 C.F.R §§ 100.8-100.12 and 34 C.F.R Part 101.

FOR THE UNITED STATES OF AMERICA:

For the U.S. Department of Education:



ARTHUR ZEIDMAN
Director
OCR San Francisco

Zachary Pelchat
Suzanne Taylor
Kendra Fox-Davis
Gayle Sakowski
U.S. Department of Education
Office for Civil Rights
50 Beale Street, Suite 7200
San Francisco, CA 94105
Tel: (415) 486-5555
Fax: (415) 486-5570

Date:

July 24, 2013

For the U.S. Department of Justice:



ANURIMA BHARGAVA
Chief
Educational Opportunities Section

Whitney M. Pellegrino
Joseph J. Wardenski
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
Tel: (202) 514-4092
Fax: (202) 514-8337

Date:

July 24, 2013

**FOR THE ARCADIA UNIFIED SCHOOL
DISTRICT:**



DAVID VANNASDALL

Deputy Superintendent, Educational Services
and Programs

Arcadia Unified School District

234 Campus Drive

Arcadia, CA 91006

Tel: (626) 821-8300

Fax: (626) 821-8647

Date: 7-24-13